

SENATE RECORD VOTE ANALYSIS

104th Congress
1st Session

Vote No. 298

July 10, 1995, 5:43 p.m.
Page S-9634 Temp. Record

REGULATORY REFORM/Rules Affecting Small Businesses

SUBJECT: Comprehensive Regulatory Reform Act of 1995 . . . S. 343. Nunn/Coverdell modified amendment No. 1491 to the Dole/Johnston substitute amendment No. 1487.

ACTION: AMENDMENT AGREED TO, 60-36

SYNOPSIS: As reported, S. 343 will make changes to reform the regulatory process. The Dole/Johnston substitute amendment would modify the bill in accordance with suggestions made by Senate Democrats, the Administration, and the American Bar Association. The amendment would: recodify and modify the Administrative Procedures Act (APA); impose judicially reviewable obligations on Federal agencies to craft rules in which the benefits justify the costs and to use peer reviewed, standardized risk assessments; expand the Regulatory Flexibility Act; reform the Delaney Clause; and strengthen congressional oversight.

The Nunn/Coverdell modified amendment would require that a proposed rule determined to be subject to the Regulatory Flexibility Act (RFA) be considered a major rule for the purposes of cost-benefit analysis and periodic agency review after it is promulgated, though not for the purpose of comprehensive risk assessment. An agency would be required to provide factual support for any determination that a proposed regulation would not have a significant impact on a substantial number of small businesses, governments, or non-profit organizations, and would therefore be exempt from the RFA. An interlocutory appeal could be made of an agency determination.

Those favoring the amendment contended:

Under the bill, rules will only be considered major rules if they will cost more than \$50 million. For small businesses, local governments, and non-profit organizations, this threshold is too high. Some rules mainly affect small entities, and those entities have less ability to bear regulatory costs than do large entities. In 1980, in recognition of the unique burdens that Federal regulations place on small entities, Congress passed the Regulatory Flexibility Act. That Act compels agencies to analyze their proposed regulations, with opportunities for public participation, in order to minimize the burdens of their final regulations on small entities. The

(See other side)

| YEAS (60) | | | NAYS (36) | | | NOT VOTING (4) | |
|----------------------------|------------|--------------------------|--------------------------|----------|--------------------------|------------------------|------------------|
| Republicans (46 or 92%) | | Democrats (14 or 30%) | Republicans (4 or 8%) | | Democrats (32 or 70%) | Republicans (4) | Democrats (0) |
| Abraham | Helms | Baucus | Chafee | Akaka | Kerry | Bond- ² | |
| Ashcroft | Hutchison | Bingaman | Cohen | Biden | Kohl | Inhofe- ^{2AY} | |
| Bennett | Kassebaum | Conrad | Roth | Boxer | Lautenberg | Jeffords- ² | |
| Brown | Kempthorne | Dorgan | Stevens | Bradley | Leahy | Smith- ² | |
| Burns | Kyl | Exon | | Breaux | Levin | | |
| Campbell | Lott | Feingold | | Bryan | Lieberman | | |
| Coats | Lugar | Feinstein | | Bumpers | Mikulski | | |
| Cochran | Mack | Graham | | Byrd | Moseley-Braun | | |
| Coverdell | McCain | Heflin | | Daschle | Moynihan | | |
| Craig | McConnell | Hollings | | Dodd | Murray | | |
| D'Amato | Murkowski | Kerrey | | Ford | Pell | | |
| DeWine | Nickles | Nunn | | Glenn | Pryor | | |
| Dole | Packwood | Robb | | Harkin | Reid | | |
| Domenici | Pressler | Rockefeller | | Inouye | Sarbanes | | |
| Faircloth | Santorum | | | Johnston | Simon | | |
| Frist | Shelby | | | Kennedy | Wellstone | | |
| Gorton | Simpson | | | | | | |
| Gramm | Snowe | | | | | | |
| Grams | Specter | | | | | | |
| Grassley | Thomas | | | | | | |
| Gregg | Thompson | | | | | | |
| Hatch | Thurmond | | | | | | |
| Hatfield | Warner | | | | | | |

EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

Nunn/Coverdell amendment would undoubtedly increase the number of cost-benefit analyses that agencies would have to conduct. Looking at the regulations that were examined under the Regulatory Flexibility Act last year, we find that 116 regulations would have been subject to this amendment. A high estimate of the costs of performing cost-benefit analyses on that many regulations is \$80 million. The Office of Management and budget has reportedly claimed that 800 regulations will be covered, but throughout this debate it has not been forthcoming with data--therefore, we do not know on what basis it is making that claim. Perhaps it is privy to some secret information about the Clinton Administration planning on launching an 800 percent blitzkrieg in new regulations on small businesses. Be that as it may, all the evidence to which we have access indicates that each year this amendment would apply to a little more than 100, and certainly no more than 150, regulations.

The burden on Federal agencies would be small, but the benefit for small businesses would be substantial. If all 116 of those regulations last year had close to a \$50 million cost, then they together would have added close to \$6 billion to the regulatory burden. If cost-benefit analyses had been performed on those regulations when they were proposed cheaper alternative methods of regulation might have been found that were just as effective. Finding lower cost ways of regulating small entities could save them billions of dollars yearly, while only costing agencies a few millions up-front when they first design their regulations. Our colleagues have expressed great concerns about increasing the costs for Federal regulatory agencies. We are much more concerned with not unnecessarily increasing the regulatory burden on small businesses, local governments, and charities.

On the issue of an interlocutory appeal, we inform our colleagues that we are not wedded to the amendment's language. Whether or not such an appeal is granted, and in what form, is not the major point of this amendment, and we are willing to discuss the matter. We urge our colleagues to put the issue of an appeal aside for now, and to vote for the concept that any regulation that will have a significant impact on small businesses, governments, and non-profit organizations should be subjected to a cost-benefit analysis and should be subject to periodic review after it is promulgated.

Those opposing the amendment contended:

The Office of Management and Budget has estimated that this amendment would result in up to 800 more proposed rules being subjected to cost-benefit analyses each year. The cost of performing such an analysis is around \$700,000. Thus, this amendment would cost the Federal Government up to \$560 million each year. We think that this cost would be too burdensome. Congress is not about to increase regulatory agencies' budgets, so without more money to analyze rules, agencies would not be able to promulgate rules that are needed to protect people and the environment. Additionally, we are greatly troubled by the judicial appeal section of this amendment. An interlocutory appeal, which would allow an appeal of a rule at the beginning of the regulatory process, would introduce a new delay, and it would not do anything to prevent an appeal at the end of the process. Appeals can take years to complete; therefore, we support current law which only allows them at the end of the rule-making process instead of at every step of the way in the development of a rule. Our colleagues have assured us they will reexamine this issue; we thank them for this assurance, but we still believe that this amendment is too expensive for the benefits that will accrue. Accordingly, we urge its rejection.